

1  
2  
3  
4  
5  
6  
7  
8                   UNITED STATES DISTRICT COURT  
9                   WESTERN DISTRICT OF WASHINGTON  
10                  AT TACOMA

11                  ANTONIO MCCLAIN,

12                  Plaintiff,

13                  v.

14                  KYNDRA SCOTT, et al.,

15                  Defendants.

16                  CASE NO. 3:25-CV-05366-TMC-DWC

17                  REPORT AND RECOMMENDATION

18                  Noting Date: June 24, 2025

19         This prisoner civil rights action has been referred to United States Magistrate Judge  
20         David W. Christel. Plaintiff Antonio McClain, proceeding *pro se* and *in forma pauperis*, initiated  
21         this action by filing a civil rights complaint pursuant to 42 U.S.C. § 1983. Dkts. 5, 6. Upon  
22         review, the Court finds the complaint frivolous and recommends this action be dismissed without  
23         leave to amend in accordance with 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2)(B).

24                  **I. BACKGROUND**

25         Plaintiff, an individual currently housed at Western State Hospital, initiated this action  
26         concerning the conditions of his confinement at various correctional facilities operated by the  
27         Washington State Department of Corrections (“DOC”). Dkt. 6 at 7. In particular, Plaintiff claims  
28         injuries resulting from technology that allegedly enables an individual to remotely control a

1 male's voice, body, and sexual responses and describes various scenarios in which this  
 2 technology was used to sexually abuse him and others. *Id.* at 9–13 (referring the technology as  
 3 “clairvoyance or radio”). Plaintiff names the following DOC staff members as defendants for his  
 4 claims: Kyndra Scott, Cynthia Goins, Gutierrez, Sarah Peak, and Melissa Power. *Id.* at 3–5. He  
 5 also names twenty-one other individuals as potential plaintiffs or injured parties. *Id.* at 2.  
 6 Plaintiff requests \$600,000 in damages for himself and the same amount on behalf of each  
 7 additional plaintiff identified in the complaint. *Id.* at 14.

## 8 II. SCREENING STANDARD

9 Under the Prison Litigation Reform Act of 1995 (“PLRA”), the Court is required to  
 10 screen complaints brought by prisoners seeking relief against a governmental entity or officer or  
 11 employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must “dismiss the  
 12 complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to  
 13 state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant  
 14 who is immune from such relief.” 28 U.S.C. § 1915A(b); *see* 28 U.S.C. § 1915(e)(2); *Barren v.*  
 15 *Harrington*, 152 F.3d 1193 (9th Cir. 1998). Dismissal on these grounds counts as a “strike”  
 16 under 28 U.S.C. § 1915(g).

17 To sustain a 42 U.S.C. § 1983 claim, a plaintiff must show that he suffered a violation of  
 18 rights protected by the Constitution or created by federal statute, and that the violation was  
 19 proximately caused by a person acting under color of state or federal law. *West v. Atkins*, 487  
 20 U.S. 42, 48 (1988); *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). A plaintiff must  
 21 provide more than conclusory allegations; he must set forth specific, plausible facts to support  
 22 his claims. *Ashcroft v. Iqbal*, 556 U.S. 662, 678–83 (2009).

23 After informing a *pro se* litigant of any pleading deficiencies, a court must generally  
 24 grant leave to file an amended complaint if there is a possibility the pleading deficiencies may be

1 cured through amendment. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir.1992); *see also*  
 2 *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (“A district court should not dismiss a *pro*  
 3 *se* complaint without leave to amend unless ‘it is absolutely clear that the deficiencies of the  
 4 complaint could not be cured by amendment.’”) (quoting *Schucker v. Rockwood*, 846 F.2d 1202,  
 5 1203–04 (9th Cir. 1988)). However, if the claims put forth in the complaint lack any arguable  
 6 substance in law or fact, then the complaint must be dismissed as frivolous. *See Neitzke v.*  
 7 *Williams*, 490 U.S. 319, 327 (1989).

8 In contrast to the standard of review applicable under Federal Rule of Civil Procedure  
 9 12(b)(6) for failure to state a claim, the PLRA’s standard for frivolousness “accords judges not  
 10 only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the  
 11 unusual power to pierce the veil of the complaint’s factual allegations and dismiss those claims  
 12 whose factual contentions are clearly baseless.” *Denton v. Hernandez*, 504 U.S. 25, 31 (1992)  
 13 (quoting *Neitzke*, 490 U.S. at 327). Thus, determining frivolousness is a matter of discretion, and  
 14 a finding of factual frivolousness is appropriate where “the facts alleged rise to the level of the  
 15 irrational or the wholly incredible, whether or not there are judicially noticeable facts available to  
 16 contradict them.” *Denton*, 504 U.S. at 33. That is, factual frivolousness necessitating dismissal  
 17 exists if the Court, in its discretion, finds the factual contentions and scenarios alleged in a  
 18 complaint are “clearly baseless,” “fanciful,” “fantastic,” or “delusional.” *Neitzke*, 490 U.S. at  
 19 327–28. On the other hand, a complaint is legally frivolous where it asserts claims against  
 20 individuals who are clearly immune from suit and/or alleges violation of unfounded or  
 21 nonexistent legal rights. *Id.* at 327.

### 22                   **III. DISCUSSION**

23 Having screened Plaintiff’s complaint, the Court finds it frivolous and subject to  
 24 dismissal under 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2)(B). Plaintiff’s contentions about the

1 existence of technology to control a man's mind, body, and sexual responses are categorically  
 2 delusional and fanciful, as are the factual scenarios in which he claims the technology was used  
 3 to abuse him, other inmates, and correctional staff. *See, e.g., Yacoub v. United States*, No. C07-  
 4 1415-RSM, 2007 WL 2745386, at \*1 (W.D. Wash. Sept. 20, 2007) (dismissing action as  
 5 frivolous where *pro se* plaintiff alleged injuries from use of "toxic chemicals, telepathy, color  
 6 coding, astral bodies, electromagnetic waves, and other methods to control his mind and bodily  
 7 functions").

8 Further, with respect to the twenty-one individuals identified as additional plaintiffs in  
 9 this action, Plaintiff is the only individual who has signed the complaint and, as a *pro se* litigant,  
 10 he may not assert claims on behalf of other persons and lacks standing to personally recover for  
 11 injuries allegedly suffered by others. *See Johns v. County of San Diego*, 114 F.3d 874, 877 (9th  
 12 Cir.1997); *Cato v. United States*, 70 F.3d 1103, 1105 n. 1 (9th Cir.1995); *McShane v. United*  
 13 *States*, 366 F.2d 286, 288 (9th Cir. 1966). *Powers v. Ohio*, 499 U.S. 400, 410 (1991) ("In the  
 14 ordinary course, a litigant must assert his or her own legal rights and interests, and cannot rest a  
 15 claim to relief on the legal rights or interests of third parties."); *Wasson v. Sonoma Cnty. Junior*  
 16 *Coll.*, 203 F.3d 659, 663 (9th Cir. 2000) ("Parties ordinarily are not permitted to assert  
 17 constitutional rights other than their own."). Therefore, in addition to factual frivolousness,  
 18 Plaintiff's claims asserted on behalf other persons identified in his complaint are legally deficient  
 19 and may not proceed, even if he believes those persons suffered injuries similar to him.

20 In sum, Plaintiff's complaint, even liberally construed, is frivolous within the meaning of  
 21 the PLRA. 28 U.S.C. § 1915A(b)(1); *see also* 1915(e)(2)(B). Because the complaint is frivolous,  
 22 it should be dismissed without leave to amend. See *Lopez v. Smith*, 203 F.3d 1122, 1128 n.8 (9th  
 23 Cir. 2000) (noting that if a claim is classified as frivolous, "there is by definition no merit to the  
 24 underlying action and so no reason to grant leave to amend").

## IV. CONCLUSION

For the above stated reasons, the undersigned recommends this action be dismissed as frivolous and without the opportunity to amend.<sup>1</sup>

Objections to this Report and Recommendation, if any, should be filed with the Clerk and served upon all parties to this suit not later than **fourteen (14) days** from the date on which this Report and Recommendation is signed. Failure to file objections within the specified time may affect your right to appeal. Objections should be noted for consideration on the District Judge's motions calendar **fourteen (14) days** from the date they are filed. Responses to objections may be filed by **the day before the noting date**. If no timely objections are filed, the matter will be ready for consideration by the District Judge on **June 24, 2025**.

Dated this 9th day of June, 2025.

David W. Christel  
David W. Christel  
United States Magistrate Judge

<sup>1</sup> Dismissal on the recommended grounds constitutes a “strike” under 28 U.S.C. § 1915(g).